

***R v Dibble; ex parte Attorney-General (Qld)* [2014] QCA 8 (11 February 2014) – Queensland Court of Appeal**

‘Abuse of process’ – ‘Breach of domestic violence order’ – ‘Concurrent criminal proceeding’ – ‘Double punishment’ – ‘Grievous bodily harm’ – ‘Permanent stay’

Charge/s: Grievous bodily harm.

Appeal Type: Appeal against a permanent stay of proceedings.

Facts: This decision was not directly related to domestic violence. However, it is relevant to situations where the Court is dealing with a breach of a domestic violence order and another criminal offence concurrently. The respondent was originally charged with public nuisance, which was dealt with summarily. However, following a formal statement made by the complainant to police and a medical opinion received, he was charged with grievous bodily harm (GBH). At trial, an application was made for a permanent stay on the basis of Section 16 of the *Queensland Criminal Code*, which provides that a person cannot be punished twice for the same act or omission. The application was granted, with the primary judge holding that the act which formed the basis of the GBH charge was the same act which formed the basis of the public nuisance charge.

Issue/s: Whether the trial judge was correct in granting the permanent stay based on the rule against double punishment.

Decision and Reasoning: The appeal was dismissed, with the Court applying the approach previously articulated in *R v Gordon* where Hanger CJ stated - “*Section 16, in saying that a person cannot be twice punished for the same act or omission, must be referring to punishable acts or omissions; and the prohibition applies though the acts or omission would constitute two different offences. It is to these cases that the section is directed.*” Hanger CJ held that a punishable act of being in charge of a motor vehicle while under the influence of a substance was not the same as the punishable act of dangerous driving causing GBH with which the offender in that case was subsequently charged. In the present matter, the Court held that the punishable acts for which the respondent was convicted in the Magistrates Court included punches which landed on the complainant, causing harm. It therefore followed that s 16 would be violated if the respondent was to be punished a second time for those acts.

Prima facie, the same test would apply when considering whether a breach of a DVO constitutes the same act for which another criminal charge is based. However, it should be noted that there is uncertainty about the application of Section 138 of the *Domestic and Family Violence Protection Act 2012* (Qld) in this context, particularly as to whether Section 138 allows double punishment. For further information, see pages 111-113 of the Queensland *Domestic and Family Violence Protection Act (2012)* Bench Book, which considers various District and Magistrates' Court decisions and the summary of *R v MKW [2014] QDC 300 (18 June 2014)*.